HIGH COURT OF UTTARANCHAL, AT NAINITAL

Criminal Misc. Application No.318 of 2006

1. Smt. Varina W/o Islam
2. Imran s/o Islam
   Both R/o House No.40
   Purani Tehsil Roorkee
   P.S. Gangnaher, Roorkee
   District Haridwar ...Applicants

Versus

1. State of Uttaranchal
2. Judicial Magistrate, Roorkee
   District Haridwar
3. Gulfam S/o Rashid Ahmad
   R/o House No.40
   Purani Tehsil Roorkee
   P.S. Gangnaher, Roorkee
   District Haridwar .....Respondents

Sri Rajendra Singh learned counsel for the applicants.
Sri Lalit Verma learned AGA.

Hon'ble J. C. S. Rawat, J.

1. The petition under section 482 Cr.P.C. has been filed for quashing the complaint and order dated 17.03.2006 passed by the Judicial Magistrate, Roorkee, District Haridwar in criminal complaint case No.426/2006 Gulfam Vs. Smt. Varina & others under section 452, 323, 504, 506 IPC.

2. Brief facts of the case are that on 20.02.2006 a complaint was filed by the respondent No.3-Gulfam with the allegations that on 06.02.2006 at about 9a.m. the applicants entered into his house and started abusing him and his sister-in-law (Bhabhi). It was further alleged that the applicants threatened them to vacate the adjoining house. The applicants have assaulted them by kicks and fists. When the other persons came at the spot, the applicants-accused fled away from there. It was

further alleged that he also approached to the police with regard to the said incident dated 06.02.2006, but no action was taken against the applicants. Again on 13.02.2006 at about 8p.m. the applicants entered into the house of the respondent No.3 and assaulted them. Thereafter, the present comlaint was flied before the learned Magistrate. The learned Magistrate recorded the statements under section 200 & 202 Cr.P.C. and thereafter he summoned the applicants vide order dated 17.03.2006. Feeling aggrieved by the order of Magistrate, the present petition hs been filed before this Court.

3. Learned counsel for the applicant contended that the Magistrate has only considered the incident dated 13.02.2006 in which Smt. Jameela-mother of the complainant sustained the injuries and no eye-witness of the said incident has been examined. Perusal of para-7 of the compliant dated 20.02.2006 shows that Smt. Shabnam and Hazra were also present at the time of incident dated 13.02.2006. But, none of the witnesses of that incident have been examined in support of the said fact. It is not revealed from the allegations made in the complaint that the complainant was present at the time of said incident. There is another incident pertaining to 06.02.2006. It was contended that the other incident pertains to 06.02.2006 in which Smt. Fatima sustained injuries. Inder and Shabudeen are the witnesses of the incident dated 06.02.2006.

4. With regard to the incident dated 13.02.2006, the injured is Jameela and the witnesses are Smt. Shabnam and Hazara. The statement of Shabuddin (PW1) was recorded before the trial court as eye witness of the

incident dated 06.02.2006. Fatima is the injured witness of the incident dated 06.02.2006. Fatima stated that the accused entered into the house on 13.02.2006 and assaulted them. Gulfam-complainant has examined himself under section 200 Cr.P.C. The Magistrate has only considered the incident dated 13.02.2006, but the eye-witness and other witnesses of that incident had not been examined. Eye-witnesses of the incident mentioned in the FIR has not been examined. The Magistrate should have discussed the evidence with regard to the incident dated 06.02.2006 as well as 13.02.2006. Therefore, the order dated by the Magistrate is liable to be set-aside.

5. In view of the above, the cognizance order is bad in law. Order dated 17.03.2006 passed by the Judicial Magistrate, Roorkee, District Haridwar in criminal complaint case No.426/2006 is set aside. The case is remitted back to the learned Magistrate, who will pass the appropriate order in the light of the observations made above. The learned Magistrate will proceed with the complaint after giving the opportunity of hearing to the complaint to adduce the evidence, if any.

6. The petition is disposed of accordingly. All the pending miscellaneous application(s) in this case, if any, shall stand disposed of accordingly.

(J.C. S. Rawat, J.)

Dated 15.05.2006
LSR